

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

JOSHUA WADE CONGER,

Civ. No. 6:22-cv-01882-AA

Plaintiff,

OPINION AND ORDER

v.

**SCOTT VAN SCHOTEN; ROBERT
HAMPTON; and BOAVIDA
COMMUNITIES,**

Defendants.

AIKEN, District Judge:

Plaintiff Joshua Conger seeks leave to proceed *in forma pauperis* (“IFP”) in this action. ECF No. 2. Before the Court is Plaintiff’s Motion to Appeal the Court’s dismissal of his Complaint. The Motion to Appeal, ECF No. 19 is DENIED.

BACKGROUND

The Court previously dismissed Plaintiff’s Complaint, ECF No. 1, with leave to amend. The Court also denied Plaintiff’s motion for appointment of counsel, for judgment, and to file excess pages. ECF Nos. 3, 10, 12. The Court deferred ruling on Plaintiff’s motion to proceed IFP, ECF No. 2, until Plaintiff filed an amended Complaint. Rather than filing an amended Complaint, Plaintiff filed an appeal. The United States Court of Appeals for the Ninth Circuit dismissed the appeal, stating

that the record demonstrates that it lacked jurisdiction because the order Plaintiff challenged in the appeal was not final or appealable. ECF No. 20; *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (dismissal of complaint with leave to amend is not appealable); *see also* 28 U.S.C. § 1291; *Wilborn v. Escalderon*, 789 F.2d 1328 (9th Cir. 1986) (denial of appointment of counsel in civil case is not appealable).

Accordingly, Plaintiff's Motion to Appeal the Court's Order is moot—Plaintiff has appealed, and that appeal is now dismissed. Therefore, Plaintiff's Motion, ECF No. 19, is DENIED.

The Court allows Plaintiff one more opportunity to file an Amended Complaint. In amending, the Court directs Plaintiff to review the instructions it set out in its Opinion and Order, Dated April 25, 2023, ECF No. 16. Plaintiff shall file the Amended Complaint in 30 days, or the case shall be dismissed.

IT IS SO ORDERED.

Dated this 23rd day of October 2023.

/s/Ann Aiken

Ann Aiken
United States District Judge